North Dakota Law Review

Volume 31 | Number 1 Article 10

1955

Corporation - Power of Corporations to Make Donations

Intangible inequalities were factors never before considered. However, the recent decision banning segregation in schools was based primarily on the psychological damage that segregation engenders in school children, resulting in a deprivation of equal educational opportunity.[11] It is submitted that this reasoning could apply to segregation in recreation, although perhaps with diminished force. Certainly the same feeling of inferiority is present in segregated play as in segregated education.

If it could be assumed that separate recreational facilities may be inherently as well as physically equal, it may be further argued that segregation of this kind is not a proper exercise of the state police power since it accomplishes no reasonable governmental objective. However, the use of the police power in requiring recreational segregation presents a different and more complex problem than that involved in segregated education. Prejudice against the Negroes is highest, except for direct sexual relations, in such personal activities as bathing, dancing and swimming.[12] As a result, it would seem a sound governmental objective to avoid racial antipathies which otherwise would result from these interracial contacts. Of course a natural aversion to members of another race furnishes, in itself, no basis for use of the police power to enforce segregation; there must be a present and pressing public necessity for the use of it.[13] It would seem that segregated recreation is a proper exercise of the police power, at least in areas of marked racial antagonisms. Clearly, segregation is more open to attack under the equal protection clause.

The recent education cases by partial rejection of the "separate but equal" doctrine, place the whole structure of segregation in serious constitutional jeopardy. In line with the traditional policy of deciding constitutional questions only when necessary to resolve the issue at hand, the Supreme Court has wisely refrained from declaring segregation, per se, unconstitutional.[14] Such a broad declaration would bring down in ruin the traditional southern social structure. The Court, aware of this non-legal reality, has merely placed itself in such a position that it can further diminish the scope of the doctrine upon an occasion of its own choosing, preferably as socio-political conditions become more favorable toward the Negro. Segregation in recreation, as in education, tends to deprive the Negro of basically the same intangible benefits that all should receive under an equalitarian constitution. Racial integration of public recreational facilities is necessary if the Negro is to advance in his continuing fight for full equality under law.

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CORPORATIONS — POWER OF CORPORATIONS TO MAKE DONATIONS. — The stockholders of plaintiff corporation objected to a proposed donation by the corporation to Princeton University on the ground that the act was ultra vires. The corporation sought a declaratory judgment to determine the status of its power to make such donations. The court *held* that a corporation was given such power, both by statutory provisions to that effect and also by the

11. Brown v. Board of Education, *supra* note 9 at page 494.
12. Myrdal, An American Dilemma, 60, 61 (1944).
13. *See* Korematsu v. United States, 323 U.S. 214 (1944).
14. Rescue Army v. Municipal Court, 331 U.S. 549 (1947); Ohio Ry. Co. v. Dittney, 232 U.S. 576 (1914); Southwestern Oil and Gas Co. v. Texas, 217 U.S. 114 (1910); Burton v. United States, 196 U.S. 283 (1904).

common law. *A. P. Smith Mfg. Co.* v. *Barlow*, 98 A. 2d 581 (N.J. 1953), *appeal dismissed* 74 Sup. Ct. 107 (U.S. 1953).

The early common law allowed contributions by profit-seeking corporations only if such contributions were proximately beneficial to the corporation.[1] An English Chancellor illustrated the strict application of this rule by stating "Charity has no business to sit at boards of directors." [2] Another court noted, "A business corporation is organized and carried on primarily for the profit of the stockholders. The powers of the directors are to be employed for that end." [3] This common law principle, however, was developed when small businesses and individuals held most of the wealth,[4] and as corporations grew larger and wealthier, the laws began to change. Through the years the rules and their ineterpretations evolved to the point where donations no longer needed to be proximately beneficial to the corporation to be sustained. *Evans v. Brunner Mond and Co.*[5] was an early decision expanding the "proximately beneficial" doctrine of the common law. The corporation had contributed to several English universities for the "furtherance of scientific research" and to "promote a reservoir of trained experts" for future employment with the company. The court held the gift permissable though the benefit derived by the corporation from the donation was only indirectly beneficial.[6] During the early period of the transition, a New York court permitted a corporate donation, simply stating that industrial conditions must change with business methods, and acts become permissable which at an earlier period would not have been considered within corporate power.[7] Following this precedent, gifts to schools,[8] churches,[9] and support of projects to increase customers [10] which would therefore have doubtless been ultra vires, were held to be intra vires.

Our Federal tax laws since 1939 have given an implied sanction to the liberal donation theory. A corporation is allowed to deduct gifts to charities up to five percent of its net income.[11] The Federal policy is further reflected

1. Hutton v. West Cork Ry. Co., 23 Ch. D. 654, 673 (1883).
2. *Ibid.* (concurring opinion).
3. Dodge v. Ford Motor Co. 204 Mich 459, 170 N.W. 668, 684, (1919) (holding dealt wth power of corporation to re-invest its surplus in the plant).
4. See Bell, *Corporation Support of Education: The Legal Basis*, 38 A.B.A.J. 119 (1952); Bleichen, *Corporate Contributions to Charities: The Modern Rule*, 30 A.B.A.J. 999 (1952).
5. 1 Ch. 359 (1920).
6. American Rolling Mill Co. v. CIR, 41 F.2d 314 (6th Cir. 1930); Greene County Nat'l Farm Loan Ass'n v. Federal Land Bank of Louisville, 57 F. Supp. 783 (D. Ky., 1944), *cert. denied* 328 U.S. 834 (1945).
7. Steinway v. Steinway and Sons, 17 Misc. 43, 40 N.Y. Supp. 718, 720 (1896). (allowed corporation in an isolated community to contribute to the building of a church, school and library because it insured faithful services of employees). See also People *ex rel.* Metropolitan Life Ins. Co. v. Hotchkiss, 136 App. Div. 150, 120 N.Y. Supp. 649, 651 (1909) (allowed the building of a hospital because it promoted employer and employee relations).
8. Whetstone v. Ottawa, 13 Kan. 240 (1874), (donation of property to school allowed because a "direct" benefit was shown); F. F. Wood Motor Co., 1 B.T.A. 1246 (1925). But see People *ex rel.* Maloney v. Pullman Palace Car. Co., 175 Ill. 125, 51 N.E. 644 (1898) (held to be beyond its powers for corporation to provide a school for its employees' children).
9. Poinsett Mills, 1 B.T.A. 7 (1924).
10. Richelieu Hotel Co. v. International Military Encampment Co., 140 Ill. 248, 29 N.E. 1044 (1892), (corporation allowed to donate to the establishment of an international military encampment); *In re* San Francisco Exposition, 50 F. Supp. 344 (N.D. Cal. 1943).
11. Int. Rev. Code § 23 (q).

by such cases as that allowing as an extraordinary and necessary business expense, amounts contributed by a corportaion for construction of a city hospital where two-thirds of the citizens were employees of the corporation.[12]

Twenty-nine states have adopted statutes which further define a corporation's power to make donations.[13] Some require that the gift must contribute to public welfare, civic betterment or charitable purposes.[14] Others permit gifts to a restricted class of recipients, with a general power to make donations for the public welfare but with restrictions on the funds that may be used, or the percentage of net income that may be given.[15] Oklahoma has given perhaps the greatest freedom of donative power; under its statute the directors of a corporation may make gifts to charitable enterprises if in their judgment the public interest will be served or the corporation itself will benefit.[16]

Since the enactment of this type of legislation, the gifts from corporations have risen from thirty to two hundred sixty million dollars a year.[17] This clearly indicates the value of such legislation.

INSANE PERSONS — DUE PROCESS OF LAW — NON-JUDICIAL COMMITMENT OF MENTALLY ILL IN NON-EMERGENCY CASES. — Proceeding in mandamus to compel the admission of a mentally ill individual to a state mental hospital. Admission had been refused on the grounds that the commitment procedure under the Missouri statute [1] was violative of the due process clauses of the state [2] and federal constitutions.[3] The statute provided for the non-judicial commitment of the mentally ill. By its terms the alleged insane person could be committed for an indefinite term upon the application of a friend, relative, or health officer and the submission of a certificate signed by two doctors stating that the individual was mentally ill and a danger to himself and the community. The statute further provided for a hearing on appeal if demanded by either the patient, guardian or relative. The court *held* that the Missouri staute violated due process in denying the individual his right to to hearing and notice before commitment. *State ex rel. Fuller v. Mullinax*, 269 S.W. 2d 72, (Mo. 1954).

Little uniformity exists in either statutory provisions or judicial decisions with respect to the commitment proceeding.[4] The difficulty in classifying the nature of the action, whether it is primarily criminal, civil or of hybrid form, and the use of judicial procedure in some jurisdictions and administra-

12. Corning Glass Works v. Lucas, 37 F. 2d 798 (D.C. Cir. 1929), *cert. denied* 281 U.S. 742 (1930).
13. Ballantine, Corporations § 85 (1946); Bell, *Corporation Support of Education: The Legal Basis*, 38 A.B.A.J 119 (1952).
14. Ark. Laws 1951, c. 69. Cal. Laws 1951, c. 564.
15. Va. Laws 1950, c. 574 p. 1309. New York Laws 1949 c. 171, § 14:3-13.
16. Okla. Laws 1949, Title 18, c. A.
17. Bell, *Corporation Support of Education: The Legal Basis.* 38 A.B.A.J. 119 (1952).

1. Mo. Rev. Stat. § 202.780 to 202.870 (1949).
2. Mo. Const. Art. I § 10.
3. U.S. Const. Amend. XIV.
4. Though it is generally agreed that the hearing on insanity is not a criminal action, but essentially civil, the fact that there is no adverse party makes classification difficult. The form may vary from a trial before judge and jury, or hearing before a judge alone, to a hearing before a county commission composed of a judge, doctor and lawyer. N.D. Rev. Code § 25-0301 (1943).